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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/464,610 12/15/99 SCHMITT

P 498-53-CON/R

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QM12/0327

EXAMINER

JACKSON, S

ART UNIT

PAPER NUMBER

3738

DATE MAILED:

03/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/466,610

Applicant(s)
Schmitt et al.

Examiner
Suzette Jackson

Group Art Unit
3738



☒ Responsive to communication(s) filed on Dec 18, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-32 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-32 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3763

The finality of the last Office action mailed September 15, 2000, has been withdrawn in view of the following rejections.

Reissue Applications

The submission establishing ownership interest was signed by applicant's attorney. An attorney or agent of record is not authorized to sign a submission establishing ownership interest, unless he/she has been established as being authorized to act on behalf of the assignee. See MPEP § 324.

The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-32 are rejected as being based upon a defective declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

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The amendment filed December 18, 2000 proposes amendments to claims 1 and 11 that do not comply with 37 CFR 1.121(b), which sets forth the manner of making amendments in reissue applications. A supplemental paper correctly amending the reissue application is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 17, 18 and 24-27 remain rejected under 35 U.S.C. 102(e) as being anticipated by Trescony et al. (5,282,847).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 28-30 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Trescony et al. in view of Lazarus (5,275,622).

Claims 19-22 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Trescony et al in view of Liebig et al. (4,407,252).

Allowable Subject Matter

Claims 23, 31 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-16 are allowable over the prior art of record.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Goldman et al. discloses a vessel prosthesis analogous to that as claimed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette Jackson whose telephone number is (703) 308-6516.

A handwritten signature in cursive script, appearing to read "S.J.", is written above the printed name "S.J.".

March 14, 2001

A handwritten signature in cursive script, appearing to read "C. McDermott", is written above the printed name "CORRINE McDERMOTT".

CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700